

## 310 CMR 1.00 Adjudicatory Proceedings

### 310 CMR 1.01 (7)(f) Adjudicatory Hearing Intervention and Participation (amended by revising section f)

1.01: Adjudicatory Proceeding Rules for the Department of Environmental Protection

(7) Intervention and Participation.

(a) Initiation. Any person not initially a party, who with good cause wishes to intervene in, or participate in, an adjudicatory proceeding shall file a motion for permission to intervene or participate in the adjudicatory proceeding.

(b) Form and Content. The motion shall state the name and address of the person making the motion. If the motion is filed by a group of persons seeking to intervene collectively as a group pursuant to M.G.L. c. 30A, § 10A, or other applicable statute, the motion shall state the name and address of each person who will be the group's authorized representative. The representative shall have the sole authority to sign papers and accept service for the group. Any paper served on the representative of the group shall be deemed served on the entire group. If no representative is specifically stated in the motion, the first person mentioned in the motion as a member of the group shall be deemed the representative of the group. All motions for permission to intervene or participate shall state:

1. why intervention or participation should be allowed;
2. the relief sought;
3. the law in support of intervention and of the relief sought; and
4. the effect of the adjudicatory proceeding on whomever is making the motion.

(c) Filing the Motion. Unless an applicable law requires otherwise, the motion may be filed at any time following commencement of the adjudicatory proceeding but not later than the close of the prehearing conference, unless a different time is established by the Presiding Officer in the interest of justice. Subject to 310 CMR 1.01(11)(a), the granting of such motions shall be within the discretion of the Presiding Officer.

(d) Intervenors. Intervenors shall be persons substantially and specifically affected by the adjudicatory proceeding, or persons who have the constitutional or statutory right to intervene without showing that they are substantially and specifically affected. A motion to intervene shall be filed prior to the prehearing conference, absent good cause shown for a later filing. A group that intervenes shall be collectively deemed one party as defined in 310 CMR 1.01(1)(c). Every person permitted to intervene as a party, whether individually or collectively, shall have all the rights of and be subject to all limitations imposed upon a party. The Presiding Officer may exclude repetitive or irrelevant material. Every motion to intervene shall be treated in the alternative as a motion to participate.

(e) Participants. A person affected by an adjudicatory proceeding shall be permitted to participate. A motion to participate shall be filed prior to the prehearing conference, absent good cause shown for a later filing. Permission to participate shall be limited to the right to argue orally at the close of the hearing and the right to file a brief. Permission to participate, unless otherwise stated, shall not be deemed to constitute an expression that the person allowed to participate is a party in interest who may be aggrieved by any final decision. Persons who moved to intervene and who were allowed only to participate may participate without waiving their right to judicial review of the denial of the motion to intervene.

(f) Intervention to Protect the Environment. Pursuant to M.G.L. c. 30A, § 10A, any group of ten or more persons may intervene collectively as a party in any adjudicatory proceeding in which damage to the environment as defined in M.G.L. c. 214, § 2A is or might be at issue; provided, however, that such intervention shall be limited to the issue of damage to the environment and the elimination or reduction thereof in order that any decision in such adjudicatory proceeding shall include the disposition of such issue. Such motion to

intervene shall be filed prior to the prehearing conference, absent good cause shown for a later filing. The intervention shall clearly and specifically state the facts and grounds for intervening and the relief sought, and each intervening person shall file an affidavit stating the intent to be part of the group and to be represented by its authorized representative. An intervener under M.G.L. c.30A, s10A shall file an affidavit stating his or her intent to intervene in the proceeding, limited to the issue of damage to the environment and the elimination or reduction thereof. Interveners under M.G.L. c.30A, § 10A shall specifically describe the damage to the environment as defined in M.G.L. c. 214, § 7A and the elimination or reduction sought. Such intervention shall be by motion filed in accordance with 310 CMR 1.01(11)(a). In any proceeding pursuant to chapter 91, at least 5 of the 10 persons shall reside in the municipality in which the license or permitted activity is located.

## **PUBLIC WATERFRONT ACT REGULATIONS: 310 CMR 9.00**

### **310 CMR 9.02: Definitions (Amend by revising 3 definitions and adding a 4th)**

~~DEM~~ **DCR** means the Department of ~~Environmental Management~~ Conservation and Recreation.

~~EOEA~~ **EOEEA** means the Executive Office of Energy and Environmental Affairs.

**Secretary** means the Secretary of the Executive Office of Energy and Environmental Affairs.

### **310 CMR 9.07 Activities Subject to Annual Permit (Amend by changing the number in 9.07(3)(b)(1)(b) and adding a phrase to 9.07(3)(b)(1)(d) and 9.07(3)(b)(1)(e))**

9.07(3) Annual Permits for Small Structures Accessory to Residences

(b) Eligibility. An application for a local permit under 310 CMR 9.07(3) may be submitted only for a project consisting entirely of a dock, pier, seawall, bulkhead, or other small-scale structure that is accessory to a residential use or serves as a noncommercial community docking facility, provided that:

1. for proposed structures, or for structures built or substantially altered after January 1, 1984:
  - a. any structure is water-dependent and pile-supported (e.g., by wooden or metal posts) or bottom-anchored, without any fill;
  - b. any structures total no more than 300 600 square feet below the mean high water shoreline for coastal waters or below the ordinary high water shoreline for inland waters;
  - c. the structure is not a marina (i.e., does not serve ten or more vessels);
  - d. if within an ACEC, such structures were existing on October 4, 1990 or the effective date of the ACEC designation, whichever is later, and, if a resource management plan for the ACEC has been adopted by the municipality and approved by the Secretary, said structures are consistent with said plan;
  - e. if within an ACEC, such structures, if built or substantially altered after October 4, 1990 or the effective date of the ACEC designation, whichever is later, are consistent with a resource management plan adopted by the municipality and approved by the Secretary; ~~and~~

### **310 CMR 9.08 Enforcement (Amend by adding the following statement at 9.08(3) and moving the current 9.08(3) to 9.08(4))**

### 9.08 Enforcement

(3) Pursuant to MGL c. 30, sec. 62I and 310 CMR 9.08(4), the Department may enforce any conditions required by the Secretary in a MEPA certificate for projects proposed within landlocked tidelands.

~~(3)~~(4) In addition to any remedy specified pursuant to M.G.L. c. 91, to the Civil Administrative Penalties Statute, M.G.L. c. 21A, § 16, or to other laws of the Commonwealth, the Department may issue Enforcement Orders requiring compliance with any regulation herein or with any condition of any license or permit issued by the Department. The employees of the Department may enter at reasonable hours upon any property subject to a license, permit, grant, or public easement to inspect for compliance either prior to or following completion of construction of the authorized structure.

### **310CMR 9.09: Effective Date and Severability (Amend by revising 9.09(1))**

9.09: Effective Date and Severability

- (1) 310 CMR 9.00 shall take effect on October 4, 1990. Revisions to 310 CMR 9.07 and 9.10 shall take effect on April 19, 1996. Revisions to 310 CMR 9.00 shall take effect on July 1, 2000. Revisions to 310 CMR 9.10 shall take effect on February 25, 2005. Revisions to 310 CMR --- shall take effect on --- TBD, 2007.

### **310 CMR 9.10 Simplified Procedures (Amend by adding a phrase to 9.10(1)(a)(4) and 9.10(1)(a)(5) and in 9.10(6) by replacing a specific fee amount)**

9.10: Simplified Procedures for Small Structures Accessory to Residences

(1) Projects Eligible for Simplified Procedures. Notwithstanding other procedural provisions of 310 CMR 9.00 to the contrary, the procedural standards of 310 CMR 9.10 shall apply to the licensing of certain small-scale structures by the Department. An application for a license under 310 CMR 9.10 may be submitted only for a project consisting entirely of a dock, pier, seawall, bulkhead, or other small-scale structure that is accessory to a residential use or serves as a noncommercial community docking facility, provided that:

- (a) for proposed structures, or for structures built or substantially altered after January 1, 1984:
1. any structure is water-dependent and pile-supported (*e.g.*, by wooden or metal posts) or bottom-anchored, without any fill;
  2. any structures total no more than 600 square feet below the mean high water shoreline for coastal waters or below the ordinary high water shoreline for inland waters;
  3. any structure is not a marina (*i.e.*, does not serve ten or more vessels);
  4. if within an ACEC, such structures were existing on October 4, 1990 or the effective date of the ACEC designation, whichever is later, and if a resource management plan for the ACEC has been adopted by the municipality and approved by the Secretary, said structures are consistent with said plan; and
  5. if within an ACEC, any structure built or substantially altered after October 4, 1990 or the effective date of the ACEC designation, whichever is later, is consistent with a resource management plan adopted by the municipality and approved by the Secretary; and

### **310 CMR 9.10 Simplified Procedures (Amend 9.10(6) by replacing a specific fee amount)**

9.10(6) Renewal and Transfer of Licenses from the Department. A license may be renewed provided the structure remains sound and conforms to plans submitted with the original application. At the time an application for renewal is submitted, the applicant shall send a notice of application for renewal included in the application package to the mayor or board of selectmen, planning board, and conservation commission of the city or town where the project site is located. The Department may require additional public notice based on comments received about the structure or other relevant information. If such additional public notice for renewal is required, the public comment period is 30 days.

Applicants for renewal shall pay a renewal fee (~~\$28~~ see 310CMR 4.10(8)(1)). Any person applying for a renewal under 310 CMR 9.10, including renewals of interim approvals or licenses originally granted under the Amnesty Program, shall compensate the Commonwealth for the rights granted in such lands through payment of an occupation fee (\$1 per square yard per year for the term of the license), in accordance with the provisions of 310 CMR 9.16. Unless otherwise provided in the license, a valid license shall run with the land and shall automatically be transferred upon a change of ownership of the affected property within the chain of title of which the license has been recorded. All rights, privileges, obligations, and responsibilities specified in the license shall be transferred to the new landowner upon recording of the changed ownership.

### **310 CMR 9.11 (Amend by revising the third row of the table at 9.11(2)(b))**

9.11 SUMMARY TABLE OF APPLICATION REVIEW SCHEUDLE p. 280 –

3. Public Comment Period Closes	No less than 30 days and no more than 60 days from notification date	No less than 30 days and no more than 60 days from notification date	No less than 30 days and no more than 60 days from notification date	No less than 30 days and no more than <u>60</u> days from notification date
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### **310 CMR 9.11(3) Filing and Completion of Application (Amend by revising 9.11(3)(b)(3))**

9.11(3) Filing and Completion of Application

(b) The Department shall assign a file number to the project only upon receipt of an application, which includes the following information:

3. a set of plans containing at least the applicable information specified in 310 CMR 9.11(3)(a) through (c); the Department may accept appropriately-scaled preliminary plans in lieu of final plans certified in accordance with ~~310 CMR 9.11(2)(e)~~ 310CMR 9.11(3)(c)1, provided such preliminary plans are prepared by:

### **310 CMR 9.12: Determination of Water-Dependency (Amend by revising 9.12(2)(b)(9), 9.12(2)(c)(1), and adding 3 new sections at 9.12(2)(b)(9) and (10), and 9.12(2)(e))**

9.12: Determination of Water-Dependency

- (2) The Department shall determine a use to be water-dependent upon a finding that said use requires direct access to or location in tidal or inland waters, and therefore cannot be located away from said waters. In making this determination, the Department shall act in accordance with the following provisions.

(b) The Department shall find to be water-dependent-industrial the following uses:

1. marine terminals and related facilities for the transfer between ship and shore, and the storage of, bulk materials or other goods transported in waterborne commerce;
2. facilities associated with commercial passenger vessel operations;

3. manufacturing facilities relying primarily on the bulk receipt or shipment of goods by waterborne transportation;
4. commercial fishing and fish processing facilities;
5. boatyards, dry docks, and other facilities related to the construction, serving, maintenance, repair, or storage of vessels or other marine structures;
6. facilities for tug boats, barges, dredges, or other vessels engaged in port operations or marine construction;
7. any water-dependent use listed in 310 CMR 9.12(2)(a)9. through 14., provided the Department determines such use to be associated with the operation of a Designated Port Area;
8. hydroelectric power generating facilities; and
9. Offshore renewable energy infrastructure facilities in the Commonwealth, including but not limited to ocean wave energy facilities, ocean current energy facilities, tidal energy facilities, including any ancillary facility thereto;
10. infrastructure facilities used to deliver electricity, natural gas or telecommunications services to the public from an offshore facility located outside the Commonwealth;

119. other industrial uses or infrastructure facilities which cannot reasonably be located at an inland site as determined in accordance with 310 CMR 9.12(2)(c) or (d).

(c) In the case of industrial and infrastructure facilities not listed in 310 CMR 9.12(2)(b), which are dependent on marine transportation or require large volumes of water to be withdrawn from or discharged to a waterway for cooling, process, or treatment purposes, the Department shall act in accordance with the following provisions:

1. the Department shall presume to be water-dependent any alteration or expansion of a facility existing or licensed as of the effective date of 310 CMR 9.00, and any energy facility for which the proposed location has been approved by the Energy Facilities Siting Council Board; this presumption may be overcome only upon a clear showing that the proposed alteration or expansion or energy facility can reasonably be located or operated away from tidal or inland waters;
2. except as provided in 310 CMR 9.12(2)(c)1., the Department shall presume that any such industrial or infrastructure facility is not water-dependent; this presumption may be overcome only upon a clear showing that such facility cannot reasonably be located or operated away from tidal or inland waters.

If an EIR is submitted, the findings necessary to overcome the above presumptions shall be based on a comprehensive analysis of alternatives and other information analyzing measures that can be taken to avoid or minimize impacts on the environment, in accordance with M.G.L. c. 30, §§ 61 through 62H. If an EIR is not submitted, such findings shall be based on information presented to the Department in the application and during the public comment period thereon.

(d) In the case of an infrastructure crossing facility, or any ancillary facility thereto, for which an EIR is submitted, the Department shall find such facility to be water-dependent only if the Secretary has determined that such facility cannot reasonably be located or operated away from tidal or inland waters, based on a comprehensive analysis of alternatives and other information analyzing measures that can be taken to avoid or minimize adverse impacts on the environment, in accordance with M.G.L. c. 30, §§ 61 through 62H. If an EIR is not submitted, such finding may be made by the Department based on information presented in the application and during the public comment period thereon.

(e) In the case of a wind turbine facility, or any ancillary facility thereto, for which an EIR is submitted, the Department shall find such facility to be water-dependent where the Secretary has determined that such facility



cannot reasonably be located or operated away from tidal or inland waters, based on an comprehensive analysis of alternatives and other information analyzing measures that can be taken to avoid or minimize adverse impacts on the environment, in accordance with M.G.L. c. 30, §§ 61 through 62H. If an EIR is not submitted, such finding may be made by the Department based on information presented in the application and during the public comment period thereon. The Department shall presume such facility to be water-dependent. This presumption may be overcome only upon a clear showing that the proposed facility can reasonably be located or operated away from tidal or inland waters.

(f) The Department shall not find the following uses to be water-dependent:

**310 CMR 9.13 Public Notice and Participation Requirements (amended by revising 9.13(1)(a), 9.13(1)(a)(4), 9.13(1)(a)(6), 9.13(2) and 9.13(3)(g))**

**9.13(1) Notice Requirements**

(a) Public notice shall be issued by the Department but distributed and published by the applicant. ~~When the Department holds a public hearing, the~~ The date of the public notice and, when required, the date of the public hearing, shall be determined by the Department. The applicant shall send a notice of license or permit application as described in 310 CMR 9.13(1)(c), by first class mail, return receipt, and provide proof of such notification to the Department, to:

(4) CZM, if the project is located within the coastal zone; ~~DEM~~DCR, if the project is located in an Ocean Sanctuary; and the ~~Department of Fisheries, Wildlife, and Environmental Law Enforcement;~~ Department of Fish and Game.

6. all landowners and easement holders of the project site and abutters thereto, as identified pursuant to 310 CMR 9.11(23)(b)1.; and

**9.13(2) Participation by CZM or DEM (Amend by inserting a new section (a); a revision to 9.13(2) is the new 9.13(2)(b))**

**9.13(2) Participation by CZM or ~~DEM~~ DCR.**

(a) Within the public comment period specified in 310 CMR 9.13(4), CZM may participate in license or permit proceedings for nonwater-dependent projects subject to federal consistency review identified in to 301 CMR 21.04, when the Department requests CZM participation for nonwater-dependent projects in writing, or for other nonwater-dependent projects in the coastal zone that the Secretary has issued a final MEPA Certificate specifying that CZM shall participate in such license or permit proceedings. CZM participation is limited to those issues identified in writing to the Department in the public comment period and necessary for making a federal consistency determination, or for those nonwater-dependent projects identified by the Department in writing or by the Secretary in a final MEPA Certificate for CZM participation, necessary to determine consistency with CZM Program policies. In license or permit proceedings for such projects, CZM shall submit a written statement to the Department as to whether the project is consistent with the policies of the CZM Program prior to issuance of the written determination, license, permit or draft thereof by the Department pursuant to 310 CMR 9.14. The Department shall presume that a project is consistent with CZM Program policies for projects other than those identified in 310 CMR 9.13(2)(a), and for those projects which CZM does not submit written comments during the public comment period.

~~(a)(b)~~ Within the public comment period specified in 310 CMR 9.13(4), ~~CZM for projects in the coastal zone, or DEM DCR,~~ for projects in an Ocean Sanctuary, may notify the Department in writing that it intends to participate in license or permit proceedings. The notice shall identify issues

relevant to ~~CZM, for projects in the coastal zone, or DEM~~DCR provisions for compliance with M.G.L. c. 132A, §§ 13 through 16 and 18, the Ocean Sanctuaries Act and participation shall be limited to identified issues. A copy of any such notice shall be sent to the applicant. If ~~CZM or DEM~~DCR files such notice, the Department shall give ~~CZM or DEM~~DCR an opportunity to participate in all meetings between the applicant and the Department concerning issues identified in the notice. If ~~DEM~~DCR has filed a notice of participation regarding a license or permit proceeding, ~~DEM~~DCR shall prepare a written statement as to whether the project complies with M.G.L. c. 132A, §§ 13 through 16 and 18, the Ocean Sanctuaries Act and ~~CZM shall prepare a written statement as to whether the project is consistent with the policies of the CZM Program~~ prior to issuance of the written determination, license, permit, or draft thereof by the Department pursuant to 310 CMR 9.14. The Department shall presume that a project is consistent with ~~CZM policies or DEM~~DCR provisions for compliance with the Ocean Sanctuaries Act unless ~~CZM or DEM~~DCR submits a notice of its intent to participate and written comments during the public comment period.

#### 9.13 (3) Public Hearing

- (g) ~~If prior to the public hearing CZM or DEM has filed notice of its intent to participate in license or permit proceedings pursuant to 310 CMR 9.13(2).~~ For projects identified pursuant to 310 CMR 9.13(2) for participation by CZM or DCR the Department shall give CZM or ~~DEM~~DCR the opportunity to co-chair said hearing.

#### **310 CMR 9.14 Decision on License and Permit Applications (amended by revising 9.14(6)(c))**

9.14(6) Upon issuance, the Department shall send a copy of the license, permit, or written determination to:

- (a) the applicant;
- (b) any intervenor and any person who has requested a copy of said license, permit, or written determination;
- (c) CZM or ~~DEM~~DCR, ~~if it has notified the Department~~for projects identified for participation pursuant to 310 CMR 9.13(2) and
- (d) the municipal official, conservation commission, planning board, and harbormaster, if any, of the city or town where the project is located.

In the case of a draft license or draft permit, the Department shall send copies to all parties listed in 310 CMR 9.14(6)(a) through (c) and to any party listed in 310 CMR 9.14(6)(d) who has commented on the application within the public comment period.

**310 CMR 9.16 TABLE 1 – FEES (Amend by replacing with a new table)**

	Water Dependent Use Projects/1 (accessory to a residential use of a 4 dwelling units)	Other Water Dependent Use Projects	Residential Non Water Dependent Use Projects (a 4 dwelling units)	Other Non Water Dependent Use Projects	Licenses with Extended Terms	Any Small Scale Project Under 310 CMR 9.10
Determination of Applicability Application	\$ 50.00	\$ 50.00	\$ 50.00	\$200.00	\$200.00	\$ 50.00
License or Permit Application	\$100.00	\$250.00	\$500.00	\$1500.00	\$2500.00	\$ 50.00
License or Permit Amendment or Renewal Application	\$ 50.00	\$100.00	\$250.00	\$750.00	\$1000.00	\$ 25.00
Certificate of Compliance Application	\$ 50.00	\$ 50.00	\$100.00	\$100.00	\$200.00	N/A
Tidewater Displacement Fee (per cubic yard)	\$ 2.00	\$ 2.00	\$ 10.00	\$ 10.00	\$ 10.00	N/A
Occupation Fee /2 (per square yard of land held by the Commonwealth)	\$1.00 x term of license		\$2.00 x term of license	Appraisal		\$1 x term of license

<sup>1</sup> -Except for facilities subject to 310 CMR 9.16(3)(b)2., for which the applicable fees shall be the same as those listed for licenses with extended terms.

2. The fee is calculated by multiplying the dollar rate shown by the length of the license term, in years, and by the area of occupied land held by the Commonwealth. This is a fixed fee for the term of the license and is assessed on a lump sum basis, except as provided in 310 CMR 9.16(3)(d).



TABLE 1 - Fees

<u>Application Type</u>	<u>Permit Code</u>	<u>Fee Reg Citation (310 CMR 4.00)</u>
<b><u>Section of Waterways Applicability</u></b>	<b><u>WW04</u></b>	<b><u>4.10(8)(d)</u></b>
<b><u>Chapter 91 Waterways License -Water Dependent <sup>1</sup></u></b>		
Water Dependent Residential Project, accessory to a residential use of 4 units or less	<u>WW01a</u>	<u>4.10(8)(a)</u>
Water-Dependent Use Projects	<u>WW01b</u>	<u>4.10(8)(a)</u>
Water Dependent License with extended terms	<u>WW01c</u>	<u>4.10(8)(a)</u>
<b><u>Chapter 91 Simplified License</u></b>		
Water Dependent Use of Small Structures, Accessory to Residence	<u>WW06</u>	<u>4.10(8)(f)</u>
Water Dependent Use of Small Structures, Accessory to Residence	<u>WW12</u>	<u>4.10(8)(l)</u>
<b><u>Chapter 91 Waterways License -Non Water Dependent</u></b>		
Water Application - Non Water-Dependent Residential 4 units or less	<u>WW14a</u>	<u>4.10(8)(a)(1)</u>
Water Application - Other Non Water-Dependent Use Projects	<u>WW14b</u>	<u>4.10(8)(a)(1)</u>
Water Application Non Water-Dependent Use Project with Extended Terms	<u>WW14c</u>	<u>4.10(8)(a)(1)</u>
Water Application - Non Water-Dependent Residential Use, 4 units or less	<u>WW15a</u>	<u>4.10(8)(a)(2)</u>
Water Application - Other Non Water-Dependent Use Projects	<u>WW15b</u>	<u>4.10(8)(a)(2)</u>
Water Application Non W-D Use Project with Extended Terms	<u>WW15c</u>	<u>4.10(8)(a)(2)</u>
Water for License within a Municipal Harbor Plan - Residential Non Water-Dependent Project, 4 units or less	<u>WW16a</u>	<u>4.10(8)(a)(3)</u>
Water for License within a Municipal Harbor Plan, Other Non Water-Dependent Projects,	<u>WW16b</u>	<u>4.10(8)(a)(3)</u>
Water for License within a Municipal Harbor Plan, Non Water-Dependent Use Project with Extended Terms	<u>WW16c</u>	<u>4.10(8)(a)(3)</u>
Water Application with joint MEPA application, Residential Non Water-Dependent Projects, 4 units or less	<u>WW17a</u>	<u>4.10(8)(a)(4)</u>
Water Application with joint MEPA application, Other Non Water-Dependent Projects	<u>WW17b</u>	<u>4.10(8)(a)(4)</u>
Water Application Non Water-Dependent Use Project with joint MEPA application and extended terms	<u>WW17c</u>	<u>4.10(8)(a)(4)</u>
<b><u>License or Permit Amendment</u></b>		
License Amendment; Residential Water Dependent Use Project, 4 units or less	<u>WW03a</u>	<u>4.10(8)(c)</u>
License Amendment; Other Water Dependent Use Projects	<u>WW03b</u>	<u>4.10(8)(c)</u>
License Amendment; Residential Non Water-Dependent Use Project, 4 units or less	<u>WW03c</u>	<u>4.10(8)(c)</u>
License Amendment; Other Non Water-Dependent Use Projects	<u>WW03d</u>	<u>4.10(8)(c)</u>
License Amendment to License with extended terms	<u>WW03e</u>	<u>4.10(8)(c)</u>
<b><u>Certificate of Compliance</u></b>		
Certificate of Compliance: Water Dependent	<u>WW05a</u>	<u>4.10(8)(e)</u>
Certificate of Compliance: Nonwater Dependent	<u>WW05b</u>	<u>4.10(8)(e)</u>
Certificate of Compliance: License with Extended Terms	<u>WW05c</u>	<u>4.10(8)(e)</u>
<b><u>Tidewater Displacement Fee (per cubic yard)</u></b>	<b><u>Rate</u></b>	
Water Dependent Projects	\$2.00	
Non-Water-Dependent Projects	\$10.00	
Projects with Extended Terms	\$10.00	
Scale Project under 310 CMR 9.10	N/A	
<b><u>Occupation Fee<sup>2</sup> (per square yard of land held by the Commonwealth)</u></b>	<b><u>Rate</u></b>	
Water Dependent Projects	\$1.00 x term of license	
Non-Water-Dependent Projects	\$2.00 x term of license	
Projects with Extended Terms	Appraisal	
License per 310 CMR 9.10	\$1.00 x term of license	

for facilities subject to 310 CMR 9.16(3)(b)(2), for which the applicable fees shall be the same as those listed for license with extended terms

calculated by multiplying the dollar rate shown by the length of the license term, in years, and by the area of occupied land held by the applicant. This is a fixed fee for the term of the license and is assessed on a lump sum basis, except as provided in 310 CMR 9.16(3)(d)

**310 CMR 9.17 Appeals (amended by revising 9.17(1)(c), (e) and (f))**

9.17(1) The following persons shall have the right to an adjudicatory hearing concerning a decision by the Department to grant or deny a license or permit:

- (a) an applicant who has demonstrated property rights in the lands in question, or which is a public agency;
- (b) any person aggrieved by the decision of the Department to grant a license or permit who has submitted written comments within the public comment period;
- (c) ten residents of the Commonwealth, pursuant to M.G.L. c. 30A, § 10A, who have submitted comments within the public comment period; at least 5 of the 10 residents shall reside in the municipality in which the license or permitted activity is located. The appeal shall clearly and specifically state the facts and grounds for the appeal and the relief sought, and each appealing resident shall file an affidavit stating the intent to be part of the group and to be represented by its authorized representative.
- (d) the municipal official in the affected municipality who has submitted written comments within the public comment period;
- (e) CZM, for any project identified in 310 CMR 9.13(2)(a) for CZM participation; project in the coastal zone, it has filed a notice of participation within the public comment period; and
- (f) ~~DEM-DCR~~, for any project in an Ocean Sanctuary, if it has filed a notice of participation within the public comment period.

**310 CMR 9.18 Recording (Amend by adding a phrase to 9.18(2))**

9.18(2) Written notice of said recording shall be given to the Department within 30 days of recording, including an identification of the Registry of Deeds or Land Court in which the license is recorded, the date of recording and the instrument or document number, prior to commencement of the project authorized under the license.

**310 CMR 9.21 Variances (Amend by revising 9.21(2)(a)(7))****9.21(2) Procedure**

- (a) A request for a variance shall be filed by the applicant prior to publication of the notice of public hearing pursuant to 310 CMR 9.13(1). The request shall be in writing and shall include, at a minimum, the following information:
  - 1. an identification of the regulation(s) from which the variance is sought;
  - 2. a description of alternative designs, locations, or construction methods which would achieve the purpose of the project without the need for the variance;
  - 3. an explanation of why each of the alternatives is unreasonable;
  - 4. an analysis of any detriments to interests of the public in waterways due to the proposed project and an explanation of how the detriments have been minimized;
  - 5. a description of the measures that will be provided to compensate for any remaining detriment to public interests in waterways; and
  - 6. a description and supporting documentation of the overriding public interest served by the project, if applicable; or
  - 7. documentation that the project is a continuation of a use or structure existing as of January 1, 1984 October 4, 1990; that there has not been a substantial change in use or substantial structural alteration since that date; and that application of 310 CMR 9.00 would cause substantial hardship to the applicant, if applicable; or

8. a legal analysis, with supporting documentation, explaining why application of 310 CMR 9.00 would so restrict the use of private property as to constitute an unconstitutional taking without compensation, if applicable.

**310 CMR 9.32 Categorical Restrictions on Fill and Structures (Amend by adding a new subsection 9.32(1)(a)(7), a phrase to 9.32(1)(e)(4)(c) and 9.32(1)(e)(4)(d) and by correcting the spelling in 9.32(2)(c))**

**9.32: Categorical Restrictions on Fill and Structures**

- (1) The Department has determined that in certain situations fill or structures categorically do not meet the statutory tests for approval under M.G.L. c. 91 or are otherwise not in keeping with the purposes of 310 CMR 9.00. Accordingly, a project shall be eligible for a license only if it is restricted to fill or structures which accommodate the uses specified below, within the geographic areas specified below.
- (a) Tidelands (Outside of ACECs and DPAs)
1. fill or structures for any use on previously filled tidelands;
  2. fill or structures for water-dependent use located below the high water mark, provided that, in the case of proposed fill, reasonable measures are taken to minimize the amount of fill, including substitution of pile-supported or floating structures and relocation of the use to a position above the high water mark;
  3. structures to accommodate public pedestrian access on flowed tidelands, provided that it is not reasonable to locate such structures above the high water mark or within the footprint of existing pile-supported structures or pile fields;
  4. pile-supported structures located below the high water mark for nonwater-dependent uses which replace or modify existing, previously authorized wharves, piers, pile fields, or other filled or pile-supported structures, in accordance with the provisions of 310 CMR 9.51(3)(a) and (b);
  5. new fill located below the high water mark for accessory or nonwater-dependent use provided that:
    - a. the purpose of such fill is to eliminate irregularities in previously altered portions of the project shoreline; and
    - b. such fill will replace previously authorized fill elsewhere along the project shoreline, on a 1:1 square foot basis and without seaward projection beyond the adjacent shoreline;
  6. stationary vessels located below the high water mark and proposed for conversion to accessory use or to nonwater-dependent facilities of public accommodation, provided that such vessels:
    - a. do not consist of platform-like floating structures, such as barges, built or modified to serve primarily as support for new buildings; and
    - b. will be licensed for a limited term, in accordance with the provisions of 310 CMR 9.15(1)(d)2.
  7. fill or structures located below the high water mark for wind turbine facilities found to be non-water dependent, pursuant to 310 CMR 9.12(2)(e), in accordance with the mitigation and/or compensation measures for non-water dependent infrastructure facilities required by 310 CMR 9.55.
- (e) Areas of Critical Environmental Concern (ACECs).
1. fill or structures for any use on previously filled tidelands;
  2. structures to accommodate public pedestrian access on flowed tidelands, provided that it is not feasible to locate such structures above the high water mark or within the footprint of existing pile-supported structures or pile fields;
  3. publicly-owned structures for water-dependent use below the high water mark, provided that such structures are designed to minimize encroachment in the water;
  4. privately-owned structures for water-dependent use below the high water mark, provided that:

- a. the proposed use is not industrial and is located within the footprint of existing previously authorized pile-supported structures, unless an insignificant deviation from said footprint is authorized by the Department in order to protect public health, safety, or the environment; or
- b. such structures are necessary to accommodate infrastructure facilities, provided that such structures are designed to minimize encroachment in the water; or
- c. such structures were existing on October 4, 1990 or the effective date of the ACEC designation, whichever is later, and if a resource management plan for the ACEC has been adopted by the municipality and approved by the Secretary said structures are consistent with said plan; or
- d. such structures, if built or substantially altered after October 4, 1990 or the effective date of the ACEC designation, whichever is later, are consistent with a resource management plan adopted by the municipality and approved by the Secretary.

**9.32(2)** Notwithstanding the provisions of 310 CMR 9.32(1), the Department may license fill or structures necessary for the following uses, provided that reasonable measures are taken to avoid, minimize, and mitigate any encroachment in a waterway:

- (c) improvement or rehabilitation of existing public roadways or existing railroad track and/or rail bed, provided that any net ~~encroachment~~ **encroachment** with respect to public roadways is limited to widening by less than a single lane, adding shoulders, and upgrading substandard intersections; or

### **310 CMR 9.33 Environmental Protection Standards (Amend by revising 9.35(1)(q))**

#### **9.33: Environmental Protection Standards**

(1) All projects must comply with applicable environmental regulatory programs of the Commonwealth, including but not limited to:

- (q) Energy ~~Facilities Siting Restructuring~~ Act, M.G.L. c. 164, §§ 69G through ~~J-S~~, and 980 CMR 1.00-~~12.00~~.

### **9.34 Conformance with Municipal Zoning and Harbor Plans (Amend by revising 9.34(2)(b)(3))**

#### **9.34 (2) Municipal Harbor Plan**

(a) If the project is located within an area covered by a municipal harbor plan, said project must conform to the provisions of said plan to the degree applicable under plan approval at 301 CMR 23.00. In making this determination the Department shall take into account all relevant information in the public record, and shall act in accordance with the following provisions:

1. the Department shall consult with the planning board or other municipal body with lead responsibility for plan implementation, as appropriate and in accordance with the provisions of 310 CMR 9.11(1). In the event a written recommendation as to plan conformance is submitted by such board or other body, the Department shall presume that the requirement is met or not met in accordance with said recommendation, except upon a clear showing to the contrary and except as otherwise provided in 310 CMR 9.34(2)(a)2.;
2. the Department shall not find the requirement has been met if the project requires a variance or similar form of exemption from the substantive provisions of the municipal harbor plan, unless the Department determines the deviation to be de minimus or unrelated to the purposes of M.G.L. c. 91 or 210 CMR 9.00;

(b) If the project conforms to the municipal harbor plan the Department shall:

1. apply the use limitations or numerical standards specified in the municipal harbor plan as a substitute for the respective limitations or standards contained in 310 CMR 9.51(3), 9.52(1)(b)1., and 9.53(2)(b) and (c), in accordance with the criteria specified in 310 CMR 9.51(3), 9.52(1)(b)1., and 9.53(2)(b) and (c) and in associated plan approval at 301 CMR 23.00 and associated guidelines of CZM;

2. adhere to the greatest reasonable extent to applicable guidance specified in the municipal harbor plan which amplifies any discretionary requirements of 310 CMR 9.00, in accordance with the criteria specified in 301 CMR 23.00 and associated guidelines of CZM;
3. determine that the requirement of 310 CMR 9.54, governing consistency with CZM policies, has been met, if applicable, except upon a written showing by CZM for a project identified in 310 CMR 9.13(2)(a) for CZM participation that the project conflicts with CZM policy in effect when the license application was completed, in a manner that was not reasonably foreseeable at the time of plan approval.

**310 CMR 9.35: Standards to Preserve Water-Related Public Rights (Amend by revising 9.35(3)(b)(2)(b), 9.35(4)(b) and 9.35(6))**

9.35: Standards to Preserve Water-Related Public Rights

(9.35(3) Public Rights Applicable To Tidelands and Great Ponds

(b) On-Foot Passage -- The project shall not significantly interfere with public rights to walk or otherwise pass freely on private tidelands for purposes of fishing, fowling, navigation, and the natural derivatives thereof; and on Commonwealth tidelands and Great Ponds for said purposes and all other lawful activities, including swimming, strolling, and other recreational activities. The Department shall find that the standard is not met if the project does not comply with the following conditions governing public pedestrian access:

2. if the project site includes filled tidelands or Great Ponds, the project shall include reasonable measures to provide on-foot passage on such lands for the public in the exercise of its rights therein, in accordance with the following provisions:
  - a. if the project is a nonwater-dependent use project, said project shall provide public pedestrian access facilities in accordance with the applicable provisions of 310 CMR 9.52 or, for infrastructure facilities, of 310 CMR 9.55;
  - b. if the project is a water-dependent use project on filled Commonwealth tidelands, said project shall provide for public ~~thereon~~ passage thereon by such means as are consistent with the need to avoid undue interference with the water-dependent uses in question; measures which may be appropriate in this regard include, but are not limited to, allowing the public to pass laterally along portions of the project shoreline, or transversely across the site to a point on the project shoreline.

9.35(4) Compensation for Interference With Public Rights in Commonwealth Tidelands and Great Ponds. Any water-dependent use project which includes fill or structures for private use of Commonwealth tidelands or Great Ponds shall provide compensation to the public for interfering with its broad rights to use such lands for any lawful purpose. Such compensation shall be commensurate with the extent of interference caused, and shall take the form of measures deemed appropriate by the Department to promote public use and enjoyment of the water, at a location on or near the project site if feasible. If the project includes a private recreational boating facility, the Department shall apply this standard in accordance with the following provisions:

- (b) if the private recreational ~~berthing~~ boating facility is a marina, additional arrangements shall be made to provide water-related benefits to the public commensurate with the scale of such facility; examples of such benefits include construction of a public boat launching ramp, operation of an ongoing program of community sailing or boating instruction, dedication of a substantial number of berths to public transient use, and provision of public pedestrian facilities beyond those required elsewhere in 310 CMR 9.00.

9.35(6) Limitation of Liability. If a project includes measures to accommodate public pedestrian access in accordance with any provision of 310 CMR ~~9.33-9.35~~, the licensee shall be considered to be a private landowner who opens land

to public recreational use without a fee and who is therefore not liable, pursuant to M.D.L. c. 21 s.17c, for injuries to persons or property due to public use, unless the owner's conduct is willful or reckless.

**310 CMR 9.40: Standards For Dredging and Dredged Material Disposal (Amend by revising 9.40(2)(b))**

**9.40: Standards For Dredging and Dredged Material Disposal**

**(2) Resource Protection Requirements**

(b) The design and timing of dredging and dredged material disposal activity shall be such as to minimize adverse impacts on shellfish beds, fishery resource areas, and submerged aquatic vegetation. The Department may consult with the Department of ~~Fisheries, Wildlife, and Environmental Law Enforcement~~ Fish and Game or the natural resource officer of the municipality regarding the assessment of such impacts.

**9.54 Consistency with Coastal Zone Management Policies (Amend by revising the 1st paragraph of 9.54 & 9.54(2))**

Nonwater-dependent use projects located in the coastal zone shall be consistent with all policies of the Massachusetts Coastal Zone Management Program, pursuant to 310 CMR 20.05(3), as may be amended hereafter. In applying this standard for projects identified for CZM participation in license or permit proceedings pursuant to 310 CMR 9.13(2)(a), the Department shall consider any written statement submitted by the Coastal Zone Management Office pursuant to 310 CMR 9.13(2), and shall act in accordance with the following provisions.

**9.54: Consistency with Coastal Zone Management Policies**

- (2) If the Department disagrees with any conclusions or recommendations of CZM and the disagreement cannot be resolved through routine consultation, the assistance and direction of the Secretary shall be sought in accordance with the provisions of M.G.L. c. 21A, § 4, governing mediation of administrative and jurisdictional conflicts within ~~EOEA-EOEEA~~. If the disagreement is not eliminated through such mediation, the Department shall include in the written determination an explanation of the specific basis for its final decision on consistency with CZM policies. If the project site is within an area covered by a municipal harbor plan, the Department shall presume this standard is met, in accordance with the provisions of 310 CMR 9.34(2)(b)3.